

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

IN RE: CROP INPUTS
ANTITRUST LITIGATION

Case No. 4:21-MD-2993 SEP

ALL CASES

**MEMORANDUM IN SUPPORT OF
MOTION FOR APPOINTMENT OF
INTERIM LEAD CLASS COUNSEL AND
EXECUTIVE COMMITTEE**

I. INTRODUCTION

Plaintiffs allege that Defendants conspired to inflate prices of their seeds and crop protection chemicals and to control the crop input industry, including by boycotting new competitors, in violation of Sections 1 and 2 of the Sherman Act. The Court has authority under Fed. R. Civ. P. 23(g) to appoint interim class counsel for Plaintiffs. Since this case will be complex, involving seventeen sophisticated and well-funded defendants, extensive discovery, intricate issues of law and fact, and substantial damages, the case should be led by experienced interim co-lead counsel and executive committee members. Plaintiffs propose three co-lead counsel and a ten-firm executive committee to allow for efficient and vigorous prosecution of this case. Notably, all Plaintiffs in this case support the requested leadership proposal.¹ The proposed leadership team members have significant leadership experience in MDL practice and antitrust class actions, sufficient resources, an ability to coordinate efficiently with Plaintiffs and counsel for Defendants, and a successful record of working inclusively on behalf of plaintiffs in complex matters.

¹ The Court recently appointed liaison counsel. Order at 1 (Aug. 10, 2021) (ECF No. 52).

II. STATEMENT OF FACTS

On June 8, 2021, the Judicial Panel on Multidistrict Litigation transferred 13 civil actions to this District for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. Those cases were ultimately assigned to this Court, as were subsequently transferred cases. *E.g.*, Conditional Transfer Order (CTO-1) at 1 (June 23, 2021) (ECF No. 5). A total of 27 actions are now before this Court. Plaintiffs' Case Management Statement at 6 & Appendix A (submitted via Email, July 27, 2021). Subsequent to the transfer of these actions, counsel for all Plaintiffs met and conferred on several occasions, seeking to present a unified leadership proposal to the Court. Plaintiffs unanimously agree on the below proposed leadership structure.

III. LEGAL STANDARD FOR APPOINTING COUNSEL

The Court may designate “interim counsel to act on behalf of a putative class before determining whether to certify the case as a class action.” Fed. R. Civ. P. 23(g)(3). Where, as here, multiple class actions have been “transferred to a single district for the coordination of pretrial proceedings, designation of interim class counsel is encouraged, and indeed is probably essential for efficient case management.” *Delre v. Perry*, 288 F.R.D. 241, 247 (E.D.N.Y. 2012) (quotation omitted); *Roe v. Arch Coal, Inc.*, No. 4:15-cv-910, 2015 WL 6702288, at *3 (E.D. Mo. Nov. 2, 2015) (quoting *Delre*, 288 F.R.D. at 247). Designating interim counsel “clarifies responsibility for protecting the interests of the class during precertification activities, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement.” Manual for Complex Litigation § 21.11 at 246-47 (Fourth 2004); *Leeb v. Charter Communications, Inc.*, No. 4:17-cv-2780, 2019 WL 1472587, at *1 (E.D. Mo. April 3, 2019) (recognizing that appointment of interim class counsel “may be helpful”).

“When appointing interim class counsel, courts generally look to the same factors used in determining the adequacy of class counsel under Rule 23(g)(1)(A).” *Leeb*, 2019 WL 1472587, at

*1 (citing *Roe*, 2015 WL 6702288, at *2). Those considerations include (1) counsel’s work on the case’s potential claims; (2) counsel’s class action and complex litigation experience with similar claims; (3) counsel’s “knowledge of the applicable law”; and (4) “the resources that counsel will commit to representing the class[.]” *Id.* (quoting Fed. R. Civ. P. 23(g)(1)(A)). Here, the proposed Plaintiffs’ proposed leadership group is composed of lawyers who investigated and filed the various complaints against Defendants. As described below, counsel have vast experience, independently and collectively, with class actions and complex multi-district litigation, and are familiar with substantive and procedural antitrust law. This leadership group can provide ample resources to conduct the litigation.

IV. ARGUMENT

A. The Firms Proposed Meet Rule 23(g)’s Requirements.

Lead counsel act for the class, either personally or by coordinating activities, in formulating and presenting the plaintiffs’ positions, developing and implementing a litigation plan, making suggestions to the court, initiating and organizing discovery, conducting principal depositions, employing experts, and meeting the litigation schedule. Manual for Complex Litigation § 10.221 at 25. Liaison counsel communicate with the court and other counsel, and historically managed paper document depositories. *Id.* at 24-25. Executive or steering committees may be tasked with particular discovery or briefing. *Id.* at 25. As discussed below, in this case Co-Lead Counsel will organize the work and adopt time and other protocols to run the litigation efficiently with this committee structure.

1. Co-Lead Counsel

a. Lockridge Grindal Nauen

Plaintiffs nominate W. Joseph Bruckner and Rebecca Peterson, of Lockridge Grindal Nauen, P.L.L.P., of Minneapolis as Co-Lead Counsel. Lockridge Grindal Nauen is a 50 attorney

firm with a national litigation and government relations practice, headquartered in Minneapolis, Minnesota. Over 20 paralegals and government relations specialists work with their attorneys, along with extensive support staff. The firm litigates class action and MDL cases in venues across the United States. The firm has 21 attorneys working in its antitrust litigation practice. It has prosecuted antitrust cases for over 40 years, and in the last 10 years has recovered over \$2 billion for clients and class members. More information about the firm, as well as about W. Joseph Bruckner and Rebecca A. Peterson can be found in the firm resume submitted as Declaration of W. Joseph Bruckner (“Bruckner Decl.”), Ex. A, and on the firm’s website at www.locklaw.com.

W. Joseph Bruckner is a senior partner at Lockridge Grindal Nauen. He has served as lead or co-lead counsel in many federal antitrust cases, and has worked on numerous other antitrust and competition law matters. His work has included managing teams for pleading, discovery, district and appellate briefing, trials, settlement, and settlement implementation. For example, he helped lead *Precision Associates, Inc., v. Panalpina World Transport (Holdings) Ltd.*, No. 08-CV-0042 (E.D.N.Y.) in which plaintiffs recovered over \$450 million from 31 corporate defendant groups. In another example, *In re Potash Antitrust Litigation (II)*, No. 1:08-cv-06910 (N.D. Ill.), as co-lead counsel he and co-counsel recovered \$90 million for the direct plaintiff purchaser class, and developed the law of the Foreign Trade Antitrust Improvements Act of 1982, 15 U.S.C. § 6a, in *Minn-Chem, Inc. v. Agrium Inc.*, 683 F.3d 845 (7th Cir. 2012) (en banc). Mr. Bruckner’s biography is Bruckner Decl., Ex. B-1.

Rebecca A. Peterson is a partner at Lockridge Grindal Nauen and practices in the firm’s class action group with a focus on consumer protection. Ms. Peterson has been a critical member of various trial teams, including recently *In re Syngenta Litigation* (Minn. Producers), No. 27-cv-15-3785 (Henn. Co. Dist. Ct., Minn.), for which she and the trial team were recognized as

Attorneys of the Year by Minnesota Lawyer for their work on behalf of U.S. farmers in that case. She has acted as lead counsel in numerous mislabeling consumer cases involving heavy metals and other contaminants, and conducted and defended dozens of depositions, including expert depositions. Ms. Peterson is also part of the firm's team prosecuting the antitrust suit *Klein et al v. Facebook, Inc.* 5:20-cv-08570 (N.D. Cal). Ms. Peterson has argued class certification motions and key dispositive motions. As a result of her experience, Ms. Peterson has significant knowledge of the legal, discovery, expert, and factual issues that are critical in litigating class action cases. Ms. Peterson's biography is Bruckner Decl., Ex. B-2.

b. Barrett Law Group

Plaintiffs also nominate John W. ("Don") Barrett and Sterling Aldridge of Barrett Law Group, P.A., as Co-Lead Counsel. Barrett Law Group P.A., founded in 1933, represents clients throughout the nation, in cases involving antitrust, insurance, defective products, and pharmaceuticals (including big tobacco), and consumer fraud. The firm has secured billions of dollars for its clients. More information on these cases and the firm are in Bruckner Decl., in the firm's resume, Bruckner Decl. Ex. C, and the firm's website, <https://barrettlawgroup.com/about/>.

John W. ("Don") Barrett, a preeminent trial lawyer, has led large lawsuits, including the Ford/Firestone MDL Litigation and the tobacco litigation that led to the 1998 Master Settlement Agreement with the tobacco industry. Mr. Barrett was one of the focus points of the book, Michael Orey, Assuming the Risk: The Mavericks, The Lawyers, and The Whistle-Blowers Who Beat Big Tobacco (2000). Don Barrett's biographical declaration is Bruckner Decl., Ex. D.

Sterling Aldridge represents consumers in various class actions, including antitrust claims, product misbranding, and labor depreciation cases, including consumers injured by Roundup. She represents Commercial and Institutional Indirect Purchaser Plaintiffs *In re Pork Antitrust Litigation*, No. 18-1776 (D. Minn.), in which her firm is a member of the Commercial

and Institutional Indirect Purchaser Plaintiffs' Steering Committee. She has represented plaintiffs in in *In Re Automotive Parts Antitrust Litigation*, No. 2311 (E.D. Mich.), *In re Generic Pharmaceuticals Pricing Antitrust Litigation*, No. 2:16-md-02724 (E.D. Pa.), and *First Impressions Salon, Inc. v. National Milk Producers Federation*, No. 3:13-cv-00454 (S.D. Ill). Sterling Aldridge's biographical declaration is Bruckner Decl., Ex. E.

c. Gustafson Gluek PLLC

Plaintiffs also nominate Michelle Looby and Daniel Gustafson from Gustafson Gluek PLLC as Co-Lead Counsel. Gustafson Gluek focuses almost exclusively on plaintiff-side complex class actions, emphasizing antitrust litigation. Gustafson Gluek has served in numerous leadership positions on complex antitrust class actions, receiving outstanding results. The firm is particularly experienced in agricultural class actions, including *In re Syngenta Litigation*, No. 27-cv-15-3785 (Henn. Co. Dist. Ct., Minn.) (serving as Co-Lead Counsel for a class of Minnesota farmers, helping reach a \$1.51 billion global settlement of all related federal and state court actions). The firm is currently serving as co-lead counsel in antitrust class actions involving broiler chickens, pork and beef. More information on the firm and its experience are in Bruckner Decl., in the firm's resume, Bruckner Decl. Ex. F, and the firm's website, <https://gustafsongluek.com/>.

Michelle Looby, a partner at Gustafson Gluek, has represented antitrust plaintiffs for over a decade and has been appointed to leadership positions across the country. Ms. Looby is currently Co-Lead Counsel in *In re Interior Molded Doors Antitrust Litig.* (E.D. Va.), *In re DPP Beef Antitrust Litig.* (D. Minn.), *In re Broilers Antitrust Litig.*, No. 16-8637 (N.D. Ill.) (Commercial Indirect Purchasers), and is on the Plaintiffs' Steering Committee in *In re Dealer Management Systems Antitrust Litig.* (N.D. Ill.), among other leadership roles. In 2015, Ms. Looby received the American Antitrust Institute's award for Outstanding Antitrust Litigation Achievement by a Young Lawyer.

Daniel Gustafson is a founding and senior partner of Gustafson Gluek. Mr. Gustafson has been appointed lead counsel or a member of an executive committee in several antitrust class actions, MDLs, and other consumer class actions. In the *Syngenta Litigation*, Mr. Gustafson was one of four settlement counsel who obtained a \$1.51 billion settlement on behalf of a class of corn farmers. As a recognized antitrust law leader, Mr. Gustafson has served as co-lead counsel in numerous cases and testified before Congress and before the United States Congressional Commission on Antitrust Modernization.

2. Liaison Counsel

The Court has appointed **Derek Brandt** and **Leigh Perica** of McCune Wright Arevelo, LLP, as Plaintiffs' Liaison Counsel. Order (Aug. 10, 2021) (ECF No. 52). As a leading complex litigation and consumer protection law firm, McCune Wright Arevelo attorneys (including Mr. Brandt) have been appointed to leadership positions in dozens of MDL or consolidated proceedings and have a long history of working effectively with co-counsel teams in complex litigations. More information on the firm and its national antitrust practice and about Mr. Brandt and Ms. Perica are available at the firm's website, <https://mccunewright.com/>.

3. Executive Committee

a. Cotchett, Pitre & McCarthy, LLP

Plaintiffs nominate Adam J. Zapala and Elizabeth Castillo of Cotchett, Pitre & McCarthy to the Executive Committee. Cotchett, Pitre & McCarthy has led many of the country's most complex antitrust cases, including *In re Automotive Parts Antitrust Litigation*, Case No. 2:12-md-02311-SFC (E.D. Mich.). Adam Zapala and Elizabeth Castillo, were recently presented with the American Antitrust Institute's ("AAI") prestigious award for litigation of the year for their work on the *Automotive Parts* case. **Adam Zapala** heads the firm's antitrust practice, and has had primary responsibility for prosecuting many of the firm's complex antitrust cases. **Elizabeth**

Castillo worked extensively on *Auto Parts* and is involved in the firm's work on other cases, such as *Transpacific*, *Capacitors*, *Resistors*, and *Domestic Air*. More information on these cases and the firm are in Bruckner Decl., in the firm's resume, Bruckner Decl. Ex. G, and the firm's website, <https://www.cpmlegal.com/>.

b. Edelson Lechtzin LLP

Plaintiffs nominate **Marc Edelson** and **Sati Gibson** of Edelson Lechtzin LLP for the Executive Committee. Edelson Lechtzin LLP is a national class action law firm based in suburban Philadelphia. The firm was founded by Managing Partners Marc H. Edelson and Eric Lechtzin, who have decades of experience litigation class actions and a strong track record of success. They lead a talented team of trial lawyers who possess diverse backgrounds and experience. More information on the firm and its experience are in Bruckner Decl., in the firm's resume, enclosed as Bruckner Decl. Ex. H, and the firm's website, <https://www.edelson-law.com/>.

c. Hellmuth & Johnson PLLC

Plaintiffs nominate Michael R. Cashman and Anne T. Regan of Hellmuth & Johnson for the Executive Committee. Hellmuth & Johnson's antitrust and unfair competition team positions its cases for success in the courtroom. **Michael Cashman** is an experienced trial lawyer who specializes in high-stakes complex commercial litigation, arbitrations and trials, including as class counsel in *H & T Fairhills v. Alliance Pipeline*, No.: 0:19-cv-01095 (D. Minn.) and as a member of the executive committee in *In re Intel Corp. CPU Marketing, Sales Practices and Products Liability Litigation*, MDL 2828. **Anne Regan** has been appointed class counsel or as a committee member in numerous cases, including most recently *H & T Fairhills v. Alliance Pipeline*, and MDL 2795, *In re CenturyLink Sales Practices and Securities Litigation*. More information on the

firm and its experience are in Bruckner Decl., in the firm's resume and biographies, Bruckner Decl. Exs. I & J, and the firm's website, <https://hjlawfirm.com/about/>.

d. Labaton Sucharow

Plaintiffs nominate Karin Garvey and Gregory Asciolla, of Labaton Sucharow, for the Executive Committee. Labaton Sucharow prosecutes precedent-setting class and direct actions on behalf of plaintiffs. **Karin Garvey** has over 20 years of antitrust litigation experience, is co-lead counsel in multiple antitrust MDL class actions, and is on the steering committee in *In re Xyrem (Sodium Oxybate) Antitrust Litigation*, (N.D. Cal.). **Gregory Asciolla**, also with over two decades of antitrust experience, chairs the firm's Antitrust and Competition Litigation Practice, serves as co-lead counsel or on the executive committees of numerous antitrust MDL class actions, and has been named as a leading plaintiffs' competition lawyer by *Chambers & Partners USA*. More information on the firm and its experience are in Bruckner Decl., in the firm's resume, enclosed as Bruckner Decl. Ex. K, and the firm's website, <https://www.labaton.com/>.

e. Paul LLP

Plaintiffs nominate Ashlea Schwarz and Rick Paul, of Paul LLP, for the Executive Committee. Paul, LLP, of Kansas City, Missouri, concentrates on complex commercial and consumer contingent fee litigation, substantially including class, collective, and mass actions. **Ashlea Schwarz** prosecutes multi-faceted, multi-district commercial cases and excels at fact-intensive cases through rigorous attention to detail. She represented plaintiffs in *In re Dicamba Herbicides Litigation*, and *In re Roundup Products Liability Litigation*, and developed facts for plaintiffs in the *Syngenta* litigation. **Rick Paul** served on the Executive Committee for state and federal MDLs and served as trial counsel for individual bellwether and Minnesota class plaintiffs in *In re Syngenta MIR162 Corn Litigation* (District of Kansas, MDL 2591) and *In re Syngenta*

Litigation (Minn. Producers), No. 27-cv-15-3785 (Henn. Co. Dist. Ct., Minn.). More information on the firm and its experience are in Bruckner Decl., in the firm's resume, enclosed as Bruckner Decl. Ex. L, and the firm's website, <https://paulllp.com/>.

f. Reinhardt Wendorf & Blanchfield

Plaintiffs nominate Garrett Blanchfield and Roberta Yard of Reinhardt Wendorf & Blanchfield for the Executive Committee. Reinhardt Wendorf & Blanchfield is a nationally recognized plaintiffs' class action firm whose practice includes litigating antitrust and racketeering cases. **Garrett Blanchfield** has litigated antitrust cases for over 25 years, and has argued appeals including *Lorix v. Crompton Corp.*, 736 N.W.2d 619 (Minn. 2007) and *Robertson v. Sea Pines Real Estate Co.*, 679 F.3d. 278 (4th Cir. 2012). **Roberta Yard** has over 15 years of complex antitrust class action experience, emphasizing discovery and privilege issues, including in *Dahl v. Bain Capital Partners LLC*, No. 07-cv-12388 (D. Mass.) and *In Re Blue Cross Blue Shield Antitrust Litigation*, No. 13-cv-20000 (N.D. Ala.). More information on the firm and its experience are in Bruckner Decl., in the firm's resume, enclosed as Bruckner Decl. Ex. M, and the firm's website, <http://www.rwblawfirm.com/>.

g. Sharp Law LLP

Plaintiffs nominate Ruth Anne French-Hodson and Isaac Diel, of Sharp Law LLP for the Executive Committee. Sharp Law LLP, of Overland Park, Prairie Village, and Lawrence, Kansas, has been appointed as lead or co-lead class counsel in more than 50 class actions in state and federal courts including as co-lead counsel in *In re EpiPen Marketing, Sales Practices and Antitrust Litigation*, No. 17-md-2785 (D. Kan.). Both Mr. Diel and Ms. French-Hodson have taken cases to trial and are willing to go the distance in high-stakes, complex litigation. **Ruth Anne French-Hodson** has specialized in class action and complex litigation for both plaintiffs and

defendants including in multi-district litigation such as *In re EpiPen* and *In re AZEK Building Products, Inc., Marketing & Sales Practices Litigation*, No. 12-6627 (D.N.J.). **Isaac Diel** has more than 30 years of trial and class action experience and currently is involved in major antitrust and RICO MDLs like *In re EpiPen*, *In re Domestic Airline Travel Antitrust Litigation*, No. 1:15-mc-1404 (D.D.C.) and *In re Hard Disk Drive Suspension Assemblies Antitrust Litigation*, No. 19-md-02918 (N.D. Cal). More information on the firm and its experience are in Bruckner Decl., in the firm's resume, enclosed as Bruckner Decl. Ex. N, and the firm's website, <https://sharplawllp.com/>.

h. Spector, Roseman & Kodroff, PC

Plaintiffs nominate Bill Caldes and Icee Etheridge of Spector, Roseman & Kodroff, PC for the Executive Committee. Spector, Roseman, & Kodroff operates a national practice focused on class actions and complex litigation, including antitrust, consumer protection, securities, and commercial claims. Numerous courts that have appointed the firm as counsel have recognized its reputation for excellence. **William G. Caldes** has been practicing law for over 25 years and has focused his practice entirely on antitrust litigation. **Icee N. Etheridge** joined the firm in 2019 as an associate and has over five years' experience litigating antitrust cases. Mr. Caldes and Ms. Etheridge will draw upon their extensive experience from their firm's leadership positions and will bring that experience to bear for the benefit of the class in this litigation. More information on the firm and its experience are in Bruckner Decl., in the firm's resume, enclosed as Bruckner Decl. Ex. O, and the firm's website, www.srkattorneys.com.

i. Taus, Cebulash & Landau LLP

Plaintiffs nominate Archana Tamoshunas and Brett Cebulash of Taus, Cebulash & Landau LLP for the Executive Committee. Taus, Cebulash & Landau LLP has extensive class action and MDL consumer and antitrust experience, including class certification, discovery, and

economic analysis, and has been appointed lead counsel or executive committee members in numerous cases. **Archana Tamoshunas**, a partner and seasoned litigator, was recently appointed to the Plaintiffs' Steering Committee representing digital advertisers against Google in *In re Google Digital Advertising Antitrust Litigation*, No. 20-cv-3556 (N.D. Cal.) and worked on trial preparation in *In re Lidoderm Antitrust Litigation*, No. 14-md-02521 (N.D. Cal.). **Brett Cebulash**, a founding partner who has litigated antitrust, consumer and securities class actions, has developed expertise among other things, in analytical solutions to complex factual and economic issues. More information on the firm and its experience are in Bruckner Decl., in the firm's resume, enclosed as Bruckner Decl. Ex. P, and the firm's website, <http://tcllaw.com/?refPageViewId=67d28427e6c6c633>.

j. Zimmerman Reed

Plaintiffs nominate David Cialkowski and Hart Robinovitch of Zimmerman Reed for the Executive Committee. Zimmerman Reed is a recognized leader in complex and class action litigation and has been appointed to lead counsel or executive committee positions in some of the largest and most complex cases across the country. **David Cialkowski** has served as class counsel or a committee member in numerous cases, including *In re Pork Antitrust Litigation*, No. 18-cv-1776 (D. Minn.) (MDL PSC) and *Mississippi ex rel. Hood v. AU Optronics*, 571 U.S. 161 (2014), for which he argued in the Fifth Circuit and worked on Supreme Court briefing. **Hart Robinovitch** has served in MDL and class leadership in numerous cases, including *In re Dicamba Herbicides Litigation*, MDL No. 2820 (E.D. Mo.) (Executive Committee), and worked on *In re Syngenta AG MIR 162 Corn Litigation*, MDL No. 2591 (D. Kan.), where he served as counsel for the court-selected non-producer bellwether plaintiff. More information on the firm and its experience are in

Bruckner Decl., in the firm's resume, enclosed as Bruckner Decl. Ex. Q, and the firm's website, www.zimmreed.com.

B. Proposed Counsel Will Run the Litigation Efficiently.

Counsel's collective experience support their ability to run the case efficiently, supporting their appointment of interim counsel. *See Lusk v. Life Time Fitness, Inc.*, No. 15-1911, 2015 WL 9858177, at *2 (D. Minn. July 10, 2015) (finding co-counsel "will be able to efficiently prosecute this litigation"). Here, to run this litigation efficiently, lead counsel will, among other things, 1) make every executive and strategy decision; 2) institute mandatory time and expense reporting protocols; 3) only allow work as assigned by co-lead counsel; and 4) limit attendance at hearings and depositions to only those necessary attorneys and other professionals. A sample time and expense reporting protocol, which, with the court's approval, will be sent to all Plaintiffs' counsel in the case once the court has appointed class counsel. *See* Bruckner Decl., Ex. R.

V. CONCLUSION

Plaintiffs unanimously agree on this leadership structure for this case and believe it will provide effective and efficient leadership for Plaintiffs the proceedings before this Court. Accordingly, for all the foregoing reasons, Plaintiffs respectfully request that the Court appoint these lawyers as Co-Lead Counsel and members of the Executive Committee in this case.

Dated: August 13, 2021

Respectfully submitted,

s/W. Joseph Bruckner

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Proposed Executive Committee for Plaintiffs